

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TODD DEAN,

Plaintiff,

ORDER
15-CV-6239-EAW-MJP

vs.

ANDREW ROBINSON AND AARON WARD,

Defendants.

PEDERSEN, M.J. Before the Court is Plaintiff's "Motion for Attorney Fees and Costs and Expenses," (Apr. 8, 2022, ECF No. 83). For the reasons stated below, the Court denies the application.

Costs are awarded to the prevailing party who obtains a judgment in a case. 28 U.S.C. § 1920; Fed. R. Civ. P. 54(d). No judgment has been entered; therefore, no costs can be awarded.

Plaintiff also seeks attorney fees. Once again, the request is premature as no judgment has yet been entered. Further, the Second Circuit has stated that non-lawyers who appear *pro se* may not recover attorney fees unless the litigation caused them to divert their time from income-producing activity. See [*Sommer v. Sullivan*, 898 F.2d 895, 896 \(2d Cir.\)](#), *cert. den.* Plaintiff is a non-lawyer who is incarcerated. Thus, it is unlikely that he suffered a loss of income because of this case.

SO ORDERED.

Dated: March __, 2020
Rochester, New York

/s/ Mark W. Pedersen
Mark W. Pedersen
United States Magistrate Judge